

12:07:29

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CISCO SYSTEMS, INC.,) CV-14-5344-BLF
)
PLAINTIFF,) SAN JOSE, CALIFORNIA
)
VS.) DECEMBER 8, 2016
)
ARISTA NETWORKS, INC.,) VOLUME 11
)
DEFENDANT) PAGES 2406-2417
)
_____)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BETH LABSON FREEMAN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: QUINN EMANUEL URQUHART & SULLIVAN, LLP
BY: KATHLEEN SULLIVAN
51 MADISON AVE, 22D FLOOR
NEW YORK, NY 10022

FOR THE DEFENDANT: KEKER & VAN NEST, LLP
BY: AUDREY HADLOCK
MICHAEL KWUN
633 BATTERY STREET
SAN FRANCISCO, CA 94111-1809

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

1 SAN JOSE, CALIFORNIA

DECEMBER 8, 2016

12:09:12 2 P R O C E E D I N G S

12:09:12 3 (COURT CONVENED AT 12:09 P.M.)

12:10:54 4 THE COURT: ALL RIGHT. WE ARE ON THE RECORD IN CISCO
12:10:57 5 VERSUS ARISTA, OUTSIDE THE PRESENCE OF THE JURY.

12:11:01 6 THE RECORD SHOULD REFLECT THAT I HAD A LENGTHY CONFERENCE
12:11:07 7 IN CHAMBERS WITH COUNSEL FOR AN ADDITIONAL CHARGING CONFERENCE
12:11:11 8 TO DISCUSS JURY INSTRUCTIONS.

12:11:12 9 THAT WILL BE LEFT OPEN, IN THE EVENT THERE ARE SOME
12:11:14 10 ADDITIONAL MODIFICATIONS TO THE INSTRUCTIONS, BUT BASED ON THE
12:11:17 11 COURT'S DETERMINATIONS IN CHAMBERS, THIS IS AN OPPORTUNITY FOR
12:11:21 12 COUNSEL TO MAKE A RECORD ON OBJECTIONS, AS THEY WISH.

12:11:24 13 AND SO I WILL START WITH CISCO. MS. SULLIVAN, DID YOU
12:11:27 14 WISH TO MAKE SOME OBJECTIONS ON THE RECORD?

12:11:29 15 MS. SULLIVAN: YES, YOUR HONOR. THANK YOU.

12:11:33 16 SO, YOUR HONOR, KATHLEEN SULLIVAN FOR CISCO.

12:11:39 17 YOUR HONOR, WE, RESPECTFULLY, WANT TO MAKE A RECORD ON THE
12:11:43 18 FOLLOWING OBJECTIONS TO THE INSTRUCTIONS THE COURT PLANS TO
12:11:46 19 GIVE THE JURY.

12:11:48 20 FIRST, WE WOULD LIKE TO LODGE AN OBJECTION TO
12:11:51 21 INSTRUCTION 39 INsofar AS IT REFERS TO A VIRTUAL IDENTITY
12:11:55 22 STANDARD RATHER THAN A SUBSTANTIAL SIMILARITY STANDARD FOR
12:12:01 23 COMPARISON OF THE ASSERTED WORKS AND THE ACCUSED WORKS UNDER
12:12:05 24 THE INDIRECT EVIDENCE TEST FOR FACTUAL COPYING.

12:12:09 25 THE REASON, YOUR HONOR, IS THAT WE, RESPECTFULLY, DISAGREE

12:12:12 1 THAT CISCO'S WORKS ARE ENTITLED ONLY TO THIN PROTECTION RATHER
12:12:17 2 THAN BROAD PROTECTION, AS YOUR HONOR HAS RULED IN HER
12:12:22 3 PRELIMINARY ORDER WITH RESPECT TO ANALYTIC DISSECTION.

12:12:25 4 AND THE REASON FOR THAT, YOUR HONOR, BRIEFLY, IS THAT WE
12:12:28 5 BELIEVE THAT ALL ASPECTS OF CISCO'S COPYRIGHTED USER
12:12:36 6 INTERFACES, INCLUDING MULTIWORD COMMAND LINE EXPRESSIONS, MODES
12:12:41 7 AND PROMPTS, HELP DESCRIPTIONS, AND SCREEN OUTPUTS, ARE SUBJECT
12:12:47 8 TO BROAD DESCRIPTION AS ORIGINAL WORKS OF CREATIVE AUTHORSHIP
12:12:50 9 THAT ARE NOT SIMPLY FUNCTIONAL AND NOT SIMPLY THE PRODUCT OF
12:12:53 10 EXTERNAL CONSTRAINTS.

12:12:56 11 WE BELIEVE WE'VE HAD SUBSTANTIAL EVIDENCE IN THE RECORD TO
12:12:58 12 SHOW THAT THE MULTIWORD COMMAND EXPRESSIONS AND OTHER ASPECTS
12:13:02 13 OF THE USER INTERFACE COULD HAVE BEEN WRITTEN IN ANY NUMBER OF
12:13:06 14 WAYS.

12:13:07 15 WE HAD EVIDENCE FROM MR. LOUGHEED THAT HE COULD HAVE
12:13:10 16 WRITTEN THE GETTYSBURG ADDRESS AS A COMMAND IF HE HAD SO
12:13:15 17 WANTED. WE HAD EVIDENCE FROM JUNIPER'S WITNESS THAT THEY WROTE
12:13:17 18 A WHOLE NEW FORM OF CLI EXPRESSION ON A GREEN FIELD.

12:13:22 19 SO WITH RESPECT, YOUR HONOR, AND WITHOUT BELABORING THE
12:13:26 20 POINT, BECAUSE IT'S SET FORTH IN THE ARGUMENTS IN OUR SUBMITTED
12:13:28 21 PROPOSED JURY INSTRUCTIONS, CISCO RESPECTFULLY OBJECTS TO THE
12:13:31 22 GIVING OF A VIRTUAL IDENTITY RATHER THAN A SUBSTANTIAL
12:13:35 23 SIMILARITY INSTRUCTION UNDER RULE 39.

12:13:38 24 ANY QUESTIONS ON THAT, YOUR HONOR?

12:13:39 25 THE COURT: NO. THANK YOU.

12:13:41 1 MS. SULLIVAN: NEXT YOUR HONOR, CISCO RESPECTFULLY
12:13:43 2 OBJECTS TO THE COURTS GIVING INSTRUCTION NUMBER 62 ON COPYRIGHT
12:13:50 3 MISUSE.

12:13:51 4 WE RESPECTFULLY SUBMIT, FOR THE REASONS ALREADY SET FORTH
12:13:54 5 IN OUR PROPOSED INSTRUCTIONS ARGUMENT SECTION, THAT COPYRIGHT
12:13:59 6 MISUSE IS AN EQUITABLE ISSUE SOLELY FOR THE COURT.

12:14:08 7 AND YOUR HONOR, OUR CITATIONS FOR THAT ARE:
12:14:11 8 OMEGA S.A. V. COSTCO, 776 F.3D 692, NINTH CIRCUIT 2015.

12:14:20 9 JUDGE WARDLAW CONCURRING, STATING, "WE EXPRESSLY ADOPTED
12:14:24 10 COPYRIGHT MISUSE AS AN EQUITABLE DEFENSE TO A CLAIM OF
12:14:27 11 INFRINGEMENT."

12:14:28 12 AND SECOND, YOUR HONOR, GRANITE STATE INSURANCE COMPANY V.
12:14:37 13 SMART MODULAR TECHNOLOGIES, INC. 76 F.3D 1023, NINTH CIRCUIT
12:14:40 14 1996, HOLDING THAT A LITIGANT IS "NOT ENTITLED TO HAVE A JURY
12:14:45 15 RESOLVE A DISPUTED AFFIRMATIVE DEFENSE, IF THE DEFENSE IS
12:14:48 16 EQUITABLE IN NATURE."

12:14:49 17 SO, YOUR HONOR, WE RESPECTFULLY OBJECT TO ANY INSTRUCTION
12:14:53 18 TO THE JURY ON COPYRIGHT MISUSE.

12:14:55 19 AND FOR THE SAME REASONS, YOUR HONOR, AND FOR THE SAME
12:14:58 20 CASE SUPPORT, UNDER THE SAME CASE SUPPORT, WE RESPECTFULLY
12:15:02 21 OBJECT TO INSTRUCTION NUMBER 93 BEING GIVEN TO THE JURY ON
12:15:07 22 COPYRIGHT ABANDONMENT.

12:15:08 23 SAME REASONS. WE THINK COPYRIGHT ABANDONMENT SHOULD NOT
12:15:12 24 BE GIVEN IN INSTRUCTION 93, JUST LIKE COPYRIGHT MISUSE SHOULD
12:15:15 25 NOT BE GIVEN TO THE JURY IN INSTRUCTION 62, BECAUSE THOSE ARE

12:15:20 1 EQUITABLE DEFENSES THAT GO SOLELY TO THE COURT, AND THAT EVEN
12:15:23 2 TO GIVE THEM TO THE JURY IN AN ADVISORY CAPACITY CREATES THE
12:15:27 3 DANGER OF JURY CONFUSION AND POTENTIAL JURY MISDIRECTION WITH
12:15:30 4 RESPECT TO WHAT THE TRUE AFFIRMATIVE DEFENSES ARE THAT ARE
12:15:33 5 UNDER THE LEGAL ISSUES THE JURY IS REQUIRED TO DELIBERATE IN
12:15:38 6 THIS CASE.

12:15:39 7 LAST, YOUR HONOR, WE HAVE TWO OBJECTIONS TO YOUR HONOR'S
12:15:43 8 DECISIONS WITH RESPECT TO THE WILFULNESS INSTRUCTIONS. AND I
12:15:49 9 HAVE TO HAVE THESE ON THE RECORD, EVEN THOUGH WE'VE TAKEN THESE
12:15:53 10 OUT OF THE INSTRUCTIONS THAT WILL BE GIVEN TO THE JURY. THESE
12:15:55 11 ARE INSTRUCTIONS 63 AND 67, PERTAINING TO COPYRIGHT WILFULNESS
12:15:58 12 AND TO COPYRIGHT INFRINGER'S PROFITS.

12:16:02 13 AND SO, YOUR HONOR, I WON'T REPEAT THE REASONS, WE'VE
12:16:05 14 SUBMITTED A BRIEF TO THE COURT ON THIS ISSUE. OUR TRIAL BRIEF
12:16:10 15 OF NOVEMBER 10, 2016, ECF 634.

12:16:15 16 AND WE KNOW THAT YOUR HONOR HAS SPENT A GREAT DEAL OF TIME
12:16:18 17 ON THIS ISSUE, AND WE RESPECTFULLY BELIEVE UNDER THE
12:16:21 18 AUTHORITIES, AS WE SUBMITTED IN THAT BRIEF, THAT NOT JUST
12:16:27 19 TAXES, BUT ALL OVERHEAD EXPENSES SHOULD BE, YOU KNOW, COVERED
12:16:34 20 BY A WILFULNESS JUDGMENT WITH RESPECT TO WHETHER THERE'S A
12:16:38 21 REDUCTION IN THE INFRINGER'S PROFITS.

12:16:40 22 TO PUT THAT MORE CLEARLY, YOUR HONOR, WE THINK IF THERE'S
12:16:45 23 WILFULNESS, THE DEFENDANT SHOULD NOT BE ABLE TO ADOPT OVERHEAD
12:16:48 24 EXPENSES. WE THINK THEIR AGREEMENT NOT TO SEEK A DEDUCTION OF
12:16:52 25 TAXES IS NOT ENOUGH TO SOLVE THE LEGAL PROBLEM.

1 AND SO WE WOULD LODGE OUR OBJECTION TO THE COURT'S
2 DECISION TO OMIT PROPOSED INSTRUCTIONS 63 AND 67 WITH RESPECT
3 TO THE EFFECT OF WILFULNESS ON INFRINGER'S PROFITS.

4 AND I THINK -- IF I MAY JUST CONFER FOR A MOMENT,
5 YOUR HONOR?

6 THE COURT: YES, PLEASE.
7 (OFF-THE-RECORD DISCUSSION.)

8 MS. SULLIVAN: YOUR HONOR, THAT CONCLUDES CISCO'S
9 OBJECTIONS ON THE RECORD AT THIS TIME, WITH A RESERVATION THAT
10 ONCE WE FINALIZE INSTRUCTIONS 39 AND 41, CISCO WOULD LIKE TO
11 RESERVE THE RIGHT TO OBJECT, IF NECESSARY, TO THE REVISED
12 INSTRUCTIONS.

13 THE COURT: THANK YOU.

14 MS. SULLIVAN: THANK YOU, YOUR HONOR.

15 THE COURT: AND WOULD ARISTA LIKE TO MAKE A RECORD OF
16 ANY JURY INSTRUCTION OBJECTIONS?

17 MS. HADLOCK: YES. WE WOULD, YOUR HONOR.

18 AUDREY HADLOCK FOR ARISTA.

19 SO FIRST OF ALL, AS YOU KNOW, WE OBJECT TO THE APPROACH ON
20 INSTRUCTION 41, FOR THE REASONS THAT WE'VE ALREADY SUBMITTED IN
21 OUR BRIEFING; BUT ESSENTIALLY, BECAUSE WE BELIEVE THAT IN A
22 THIN PROTECTION CASE, THE TEST FOR WHETHER COPYING IS ELICIT
23 AND RISES TO THE LEVEL OF INFRINGEMENT, ALSO NEEDS TO INCLUDE A
24 VIRTUAL IDENTITY COMPARISON OF THE WORKS AND NOT SIMPLY A
25 QUESTION OF WHETHER COPYING IS MORE THAN TRIVIAL.

12:18:12 1 SO THAT IS OUR OBJECTIONS ON 41.

12:18:17 2 AND OF COURSE 39, THOSE ARE RELATED, AND WE WOULD ALSO
12:18:21 3 RESERVE THE RIGHT, DEPENDING ON HOW THAT PLAYS OUT, BECAUSE
12:18:24 4 THOSE ARE STILL UNSETTLED INSTRUCTIONS.

12:18:27 5 RELATEDLY, THERE'S ALSO INSTRUCTION NUMBER 25. AND WE
12:18:35 6 OBJECT, AS YOUR HONOR KNOWS, THE DEFINITION OF THE WORKS IN
12:18:39 7 QUESTION AS THE USER INTERFACES OF THE OPERATING SYSTEMS, WE
12:18:43 8 BELIEVE THAT THAT SHOULD BE THE OPERATING SYSTEMS THEMSELVES IN
12:18:46 9 THEIR ENTIRETY.

12:18:48 10 AND WE BELIEVE, FURTHER, THAT THE EVIDENCE AT TRIAL HAS
12:18:52 11 CONFIRMED THAT THAT IS THE ONLY PROPER APPROACH IN THIS CASE ON
12:18:54 12 THE FACTS OF THIS CASE.

12:18:56 13 AND IN ADDITION, FOR THE REASONS, OF COURSE, IN OUR
12:18:58 14 BRIEFING ON THE DEFINITION OF THE WORKS WHICH WAS SUBMITTED
12:19:02 15 SEPARATELY AS WELL.

12:19:04 16 AND THAT'S INSTRUCTION 25.

12:19:09 17 WE ALSO OBJECT TO THE QUESTION OF DISGORGEMENT BEING PUT
12:19:13 18 TO THE JURY AT ALL FOR REASONS THAT, AGAIN, WE'VE BRIEFED
12:19:18 19 PREVIOUSLY.

12:19:23 20 WE ALSO, TO MAKE OUR RECORD ON THESE OBJECTIONS THAT
12:19:28 21 PREVIOUSLY WERE PRESENTED IN OUR THIRD -- THE PARTY'S THIRD
12:19:32 22 AMENDED STIPULATED AND DISPUTED PROPOSED JURY INSTRUCTIONS, WE
12:19:36 23 WANT TO PRESERVE OUR OBJECTIONS ON NUMBER 31, WHICH ADDRESSED
12:19:41 24 THE SIGNIFICANCE OF THE COPYRIGHT REGISTRATIONS IN THIS CASE.

12:19:45 25 SO WE STILL OBJECT ON THAT.

12:19:47 1 ALSO, INSTRUCTION NUMBER 35, THE DERIVATIVE WORKS
12:19:52 2 INSTRUCTION, SHOULD NOT BE GIVEN IN THIS CASE ON THESE FACTS.
12:19:57 3 IT IS SIMPLY CONFUSING TO THE JURY, AS WE'VE ARGUED IN OUR
12:20:00 4 PAPERS.

12:20:03 5 ALSO, AS TO THE COMPILATION INSTRUCTION, NUMBER 33, WE
12:20:08 6 MAINTAIN OUR OBJECTION THAT THE COMPILATION SHOULD BE
12:20:12 7 IDENTIFIED THERE WITH THE CONCEPT OF A COMPILATION, AS PART OF
12:20:16 8 THAT INSTRUCTION.

12:20:24 9 AS TO THE SCÈNES À FAIRE INSTRUCTION, WE MAINTAIN OUR
12:20:28 10 OBJECTION THAT IT IS NOT ADEQUATE. THESE ARE DIFFICULT
12:20:32 11 CONCEPTS, AND OUR PROPOSED INSTRUCTION, WHICH WAS INSTRUCTION
12:20:44 12 NUMBER 61, ARISTA'S PROPOSED 61, IS A BETTER REFLECTION OF THE
12:20:49 13 SCÈNES À FAIRE DOCTRINE AND SHOULD BE GIVEN.

12:20:55 14 OH, AN ISSUE RELATED TO THE QUESTION ON INSTRUCTIONS 39
12:20:59 15 AND 41 ABOUT PRESERVING, MORE CORRECTLY, THE DISTINCTION
12:21:04 16 BETWEEN QUESTIONS OF WHETHER THERE WAS COPYING AND WHETHER THAT
12:21:10 17 RISES TO THE LEVEL OF ELICIT COPYING, NUMBER 36, SETTING OUT
12:21:13 18 THE BASIC COPYING TEST, SHOULD BE GIVEN AS ARISTA PROPOSED,
12:21:18 19 INCLUDING THE VIRTUAL IDENTITY STANDARD IN THAT AS WELL.

12:21:21 20 AND WE DO BELIEVE THAT THAT IS AN ERROR THAT SHOULD BE
12:21:24 21 CORRECTED -- COULD STILL BE CORRECTED TO CONFORM TO
12:21:27 22 YOUR HONOR'S, NOW DECISION, THAT THE POINT WAS DISPUTED. BUT
12:21:30 23 NOW THAT YOUR HONOR HAS DECIDED THAT THE PROTECTION APPLIES, WE
12:21:33 24 MIGHT WANT TO FIX AND SHOULD FIX NUMBER 36 AS WELL.

12:21:37 25 FINALLY, I BELIEVE, THERE ARE THE DAMAGES INSTRUCTIONS.

12:21:41 1 THESE ARE DISPUTED INSTRUCTIONS, OURS WAS 67, THE FINAL
12:21:47 2 INSTRUCTION NOW IS NUMBER 66. AND THIS ADDRESSES THE QUESTION
12:21:52 3 OF DISGORGEMENT AND ARISTA'S PROFITS.

12:21:56 4 AGAIN, WE BELIEVE, FOR THE REASONS THAT WE PREVIOUSLY
12:21:59 5 STATED IN OUR PAPERS, THAT ARISTA'S INSTRUCTION IS MORE
12:22:03 6 CORRECT.

12:22:05 7 IF I COULD ALSO JUST DOUBLE CHECK.

12:22:08 8 THE COURT: MAY I JUST ASK --

12:22:10 9 MS. HADLOCK: YES, OF COURSE.

12:22:11 10 THE COURT: -- WHEN YOU POSE AN OBJECTION TO
12:22:16 11 INSTRUCTION 36, IS THAT OBJECTIONABLE BECAUSE -- HAS THAT
12:22:18 12 ARISEN BECAUSE OF MY RULING LAST NIGHT ON ANALYTIC DISSECTION?
12:22:22 13 AND I DIDN'T BRING IT WITH ME TO THE BENCH, I THOUGHT I WAS
12:22:25 14 JUST LISTENING HERE.

12:22:27 15 MS. SULLIVAN: YOUR HONOR, I WANTED TO OFFER, ON
12:22:28 16 CISCO'S PART, WE ARE HAPPY TO AMEND 36, VOLUNTARILY, TO CONFORM
12:22:32 17 TO YOUR HONOR'S ORDER LAST NIGHT.

12:22:33 18 THE COURT: YES, THANK YOU.

12:22:34 19 MS. SULLIVAN: SO AS TO THAT, MAY WE ADD THAT TO THE
12:22:38 20 EXERCISE FOR THIS EVENING, AND IF --

12:22:40 21 THE COURT: YES.

12:22:40 22 MS. SULLIVAN: AND IF ARISTA HAS OTHER OBJECTIONS TO
12:22:43 23 36, PLEASE -- I WILL GET OUT OF THE WAY. BUT ON THAT ONE, I
12:22:45 24 THINK WE CAN RESOLVE IT.

12:22:46 25 THE COURT: ALL RIGHT. THAT'S EXCELLENT. THANK YOU.

12:22:49 1 AND CERTAINLY -- AND YOU CONTINUE TO COMB THROUGH THEM,
12:22:53 2 AND I WILL APPRECIATE THE PARTIES MEETING ON INSTRUCTION 36 TO
12:22:55 3 CONFORM IT TO MY ORDER.

12:22:57 4 MS. HADLOCK: OKAY.

12:22:57 5 SO WE WILL MAKE -- THANK YOU, MS. SULLIVAN, FOR THE
12:23:01 6 CLARIFICATION. WE WILL ATTEMPT TO CORRECT THAT, AND IF THERE
12:23:03 7 ARE ANY FURTHER ISSUES THAT ARISE, OF COURSE, YOU KNOW, WE WILL
12:23:08 8 ALL BE HERE TO RESOLVE THEM.

12:23:09 9 THE COURT: I APPRECIATE THAT. OKAY. GOOD.

12:23:12 10 AND, OF COURSE, WE STILL HAVE TOMORROW. IF, IN YOUR MEET
12:23:14 11 AND CONFER, ANYTHING ELSE ARISES, WE'VE LEFT THE CHARGING
12:23:17 12 CONFERENCE OPEN SO THAT WE CAN CONTINUE TO LOOK AT VERY
12:23:23 13 ISOLATED ISSUES --

12:23:25 14 MS. HADLOCK: UNDERSTOOD, YOUR HONOR.

12:23:26 15 THE COURT: -- VERY PINPOINT ISSUES.

12:23:28 16 GOOD.

12:23:29 17 MS. SULLIVAN: IF YOU ARE FINISHED, I HAVE ONE MORE
12:23:32 18 THING.

12:23:32 19 MS. HADLOCK: I BELIEVE I'M FINISHED. WHY DON'T YOU
12:23:34 20 DO YOUR ONE MORE THING, AND I WILL SEE IF I HAVE ONE MORE THING
12:23:38 21 AS WELL.

12:23:39 22 MS. SULLIVAN: THANK YOU, YOUR HONOR.

12:23:39 23 WE WILL CLARIFY INSTRUCTION 36. BUT FOR THE RECORD, I
12:23:42 24 WILL MAKE MY RECORD, AS CLARIFIED, CISCO RESPECTFULLY OBJECTS
12:23:46 25 TO INSTRUCTION 36, INsofar AS IT WILL EMPLOY A VIRTUAL IDENTITY

12:23:46 1 RATHER THAN A SUBSTANTIAL SIMILARITY STANDARD OF COMPARISON
12:23:55 2 BECAUSE WE BELIEVE OUR COPYRIGHTED WORKS ARE ENTITLED TO BROAD
12:23:58 3 PROTECTION, NOT THIN PROTECTION, FOR THE SAME REASONS STATED IN
12:24:01 4 OUR PAPERS AND IN MY ARGUMENT WITH RESPECT TO INSTRUCTION 39.

12:24:01 5 THANK YOU.

12:24:03 6 THE COURT: GOOD. ALL RIGHT.

12:24:04 7 MR. KWUN?

12:24:06 8 MR. KWUN: YOUR HONOR, ONE MORE MATTER.

12:24:06 9 THERE WAS A STIPULATION WITH A PROPOSED ORDER THAT THE
12:24:10 10 PARTIES SUBMITTED REGARDING COPYRIGHT WILFULNESS --

12:24:12 11 THE COURT: LODGED? I'VE ALREADY SIGNED IT.

12:24:14 12 MR. KWUN: OH, I'M SORRY, I MISSED IT.

12:24:15 13 THE COURT: THAT WAS A COUPLE OF DAYS AGO.

12:24:18 14 I SIGNED THAT RIGHT AWAY. ARE YOU KIDDING? I ALWAYS SIGN
12:24:20 15 STIPULATIONS IMMEDIATELY.

12:24:23 16 ANYTHING ELSE?

12:24:24 17 MS. HADLOCK: I DON'T BELIEVE SO, YOUR HONOR.

12:24:25 18 THE COURT: EXCELLENT. THANK YOU ALL.

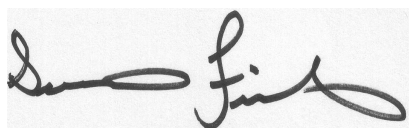
12:24:26 19 I WILL SEE YOU TOMORROW MORNING FOR THE CONTINUATION OF
12:24:29 20 THAT EVIDENCE.

12:24:30 21 (THE PROCEEDINGS WERE CONCLUDED AT 12:24 P.M.)
22
23
24
25

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT
REPORTER OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
TRANSCRIPTION TO THE BEST OF MY ABILITY.

A handwritten signature in black ink, appearing to read "Summer A. Fisher", is written over a light gray rectangular background.

SUMMER A. FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

DATED: 12/8/16